

Caring for Our Nation's Waters

U.S. Army Corps of Engineers Regulatory Program

Water is one of our nation's most valuable resources. It is becoming increasingly important that we protect the quality of our inland waters and wetlands for the use and benefit of future generations.

This brochure discusses the regulatory program of the U.S. Army Corps of Engineers: what it is, how it began, how it may affect you and what you as a concerned citizen can do to help.

If you are planning work in an arroyo, river, stream, or wetland, a Corps permit (Section 10 or Section 404) may be required.

The program provides for the consideration of all concerns of the public -- environmental, social and economic -- in the Corps' decision-making process to either issue or deny permits. As part of its responsibility to protect water quality, the Corps of Engineers Section 404 permit program extends to many areas that were not regulated prior to the Clean Water Act.

The purpose of the Section 404 program is to insure that the biological and chemical quality of our nation's waters is protected from irresponsible and unregulated discharges of dredged or fill material that could permanently alter or destroy these valuable resources.

You are urged to understand and support this program.

Corps of Engineers Involvement

The Corps' permit program is not new. When it began in 1886, its purpose was principally to avoid obstructions in navigable waters. In response to changing environmental, social and economic conditions, the scope has been broadened. Sections 9 and 10 of the River and Harbor Act of 1899 were established to regulate dams, dikes, and obstruction or alteration of navigable waters of the United States.

The Corps of Engineers regulatory function was expanded when Congress passed the Federal Water Pollution Control Act Amendments of 1972. Section 404 of the Act established a permit program to be administered by the Corps of Engineers to regulate the discharge of dredged or fill material into waters of the United States. The Act, renamed the Clean Water Act, was further amended in 1977 to provide exemptions, general permits and program turnover to states having approved programs.

The Corps has published regulations in the Code of Federal Regulations (33 CFR, Parts 320-330) to administer these laws.

Activities Requiring Permits

A Corps permit is required if you plan to locate a structure or discharge dredged or fill material in waters or navigable waters of the United States. This information is directed to those individuals, companies, corporations, and government agencies planning construction activities in a river, stream, lake or wetland within the jurisdiction of the Corps of Engineers.

Examples of regulated activities are materials placed in a waterway or wetland for any purpose including: commercial, industrial or recreational construction; roadfills and causeways where portions of the construction are in waters or wetlands; dams and dikes; and protection devices such as levees, groins, riprap and other bank stabilization.

Waters of the United States

Waters of the United States are administratively defined as (1) the traditional "navigable waters of the United States" including adjacent wetlands; (2) all interstate waters including interstate wetlands; (3) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), prairie potholes, mudflats, playa lakes, etc.; (4) all impoundments of these waters; (5) tributaries of the above listed waters; and (6) wetlands adjacent to the above waters. Section 404 permits are required for construction activities in these waters.

Navigable waters are defined as waters that have been used in the past, are now used or susceptible to use as a means to transport interstate or foreign commerce up to the head of navigation. Section 10 and/or Section 404 permits are required for construction activities in these waters.

"Wetlands" are areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

The landward regulatory limit for non-tidal waters (in the absence of adjacent wetlands) is the ordinary high water mark. The ordinary high water mark is the line on the shores established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

Exempted Activities

There are a few activities which involve placement of fill in a waterway that are not subject to the Section 404 regulatory program. These exempted activities are briefly described here. The fill must not change the use of the water and the flow must not be impaired.

1. Normal farming, silviculture and ranching activities such as plowing, seeding cultivating, minor drainage and harvesting.
2. Maintenance or emergency repair of a currently serviceable structure such as dams, riprap, abutments, and levees. The original design may not be changed.
3. Maintenance or construction of stock ponds or irrigation ditches. Maintenance (not construction) of drainage ditches. Discharges associated with irrigation facilities are included.
4. Construction of temporary sedimentation basins at construction sites if fill material is not placed in waters of the United States.
5. Activities for which a state has an approved program under Section 208 of the Clean Water Act for non-point pollution sources.
6. Construction or maintenance of farm roads, forest roads or temporary mining roads. Best management practices must be followed to reduce flow pattern impairment and aquatic impacts (see regulations for more information).

Regional Permits

Regional permits are issued by the District Engineer for a general category of fill activities when (1) the activities are similar in nature and cause minimal environmental impact (both individually and cumulatively), and (2) the regional permit reduces duplication of regulatory control by State and Federal agencies.

Contact the Albuquerque District Corps of Engineers for information regarding regional permits in this area.

Individual Permits

Upon receipt of your application for a Section 404 permit, a public notice is issued to all known interested persons.

Historical/archeological impacts and effects on endangered species and critical habitat are reviewed. An environmental assessment is prepared to further evaluate the project's impact.

Water quality certification is requested from the appropriate state, federal, or tribal agency. Comments are received from interested individuals, groups, and government agencies. A public hearing may be held to acquire information and allow the public an opportunity to present their views.

In evaluating a permit application, the Corps of Engineers thoroughly analyzes the impacts of the proposed activity on the public interest.

Consideration is given to many factors, including: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion, recreation, water supply and conservation, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people. Individual and cumulative impacts are evaluated.

The decision to issue a permit is based on the benefits which may accrue from the proposed project. Benefits are weighed against foreseeable detriments, and a permit is issued only when its issuance is found to be in the public interest.

After evaluating the above considerations, the District Engineer makes the final decision to issue or deny the permit.

Processing time usually takes less than 120 days unless a public hearing is required or an environmental impact statement must be prepared.

Pre-Application Consultation

You are encouraged to contact the Albuquerque District Corps of Engineers for proposed work in waters in this jurisdictional area.

Exemptions, nationwide, regional and individual permit requirements will be reviewed. By discussing all information prior to application submittal, your application will be processed more efficiently.

An official determination as to the need for a Department of the Army permit will be provided on request.

Application for an Individual Permit

An individual Section 404 permit will be required for placement of dredged or fill material in waters of the United States if the project is not exempted from the Section 404 program and does not fall under one of the nationwide or regional permits.

If an individual permit is required, an application form should be completed. This application is available from the Corps of Engineers. Information needed includes (1) drawings (size 8½" X 11") sufficient for others to understand your project; (2) location, purpose, types and quantities of fills, and intended use; (3) expected start and completion dates; (4) names and addresses of adjoining landowners; and (5) location and dimensions of adjacent structures.

Nationwide Permits

A nationwide permit is a form of general permit authorizing a category of activities throughout the nation. These permits are valid only if their terms and conditions are met. If the conditions cannot be met, a regional or individual permit will be required.

Many of the nationwide permits require **Notification** to the District Engineer prior to use. **Regional conditions** have been added within each state and are available from the Regulatory Office or on our web page. In many cases, individual **water quality certification** must be obtained pursuant to General Condition No. 9 of the nationwide permits. A water quality certification information sheet is available.

A list of available nationwide permits and conditions is provided below. Summaries of the nationwide permits are available from the Regulatory Office or on our web page.

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Maintenance
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]

27. Stream and Wetland Restoration Activities
28. Modifications of Existing Marinas
29. Single-Family Housing
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Projects
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Residential, Commercial, and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

Nationwide Permit General Conditions

1. Navigation
2. Proper Maintenance
3. Soil Erosion and Sediment Controls
4. Aquatic Life Movements
5. Equipment
6. Regional and Case-by-Case Conditions
7. Wild and Scenic Rivers
8. Tribal Rights
9. Water Quality
10. Coastal Zone Management
11. Endangered Species
12. Historic Properties
13. Notification
14. Compliance Certification
15. Use of Multiple Nationwide Permits
16. Water Supply Intakes
17. Shellfish Beds
18. Suitable Material
19. Mitigation
20. Spawning Areas
21. Management of Water Flows
22. Adverse Effects from Impoundments
23. Waterfowl Breeding Areas
24. Removal of Temporary Fills

25. Designated Critical Resource Waters
26. Fills within 100-Year Floodplains
27. Construction Period

Further Information about Nationwide Permits

1. The Corps is authorized to determine if an activity complies with the terms and conditions of a nationwide permit.

2. Use of a nationwide permit does not obviate the need to obtain other federal, state or local authorizations required by law.

3. Nationwide permits do not grant any property rights or exclusive privileges.

4. Nationwide permits do not authorize any injury to the property or rights of others.

5. Nationwide permits do not authorize interference with any existing or proposed federal project.

Nationwide permit conditions are periodically revised. Please call or write for a determination and for a summary of current nationwide permit conditions.

Section 10 River and Harbor Act of 1899

Structures or work affecting navigable waters of the United States are regulated under Section 10 of the River and Harbor Act of 1899. The law applies to all structures, from small recreational docks to large commercial structures, and includes any dredging or excavation, bank protection, overhead powerlines or other work.

Even structures or work outside the limits defined for navigable waters of the United States could require a Section 10 permit if the structure or work effects the course, location or condition of the water body in such a manner as to impact the navigable capacity of the water body.

Navigable waters within the Albuquerque District include Navajo Reservoir and the Rio Grande along the international boundary. The Corps of Engineers will provide more information and an application form upon request.

You Can Help

The understanding and support of the American people is vital to the success of this program. To protect our nation's water resources and assure their use and enjoyment of future generations, we must all join this vital effort. We ask your help in "passing the word" to others concerning the permit requirements outlined in this brochure and solicit your views and comments on better ways of attaining the goals of this program. Your comments, questions, and suggestions should be directed to the addresses in this brochure.

Mailing List

We maintain a mailing list of public and private people, organizations, and agencies interested in the Corps of Engineers regulatory program. We distribute notifications of changes to the regulatory program and public notices about individual permit projects electronically and by postcard. If you would like to receive these notifications, please send your name, e-mail address and area of interest (e.g., county, counties, or state) to the Albuquerque office listed below. You may e-mail your request to cyndie.d.coppenbarger@usace.army.mil. Alternatively, if you would like to receive notices by postcard, please provide a mailing address with your request.

We periodically update the mailing list. If you do not respond to an update request, your name may be removed from the list.

For More Information

In New Mexico:

Albuquerque District Corps of Engineers
ATTN: Regulatory Branch
4101 Jefferson Plaza, NE
Albuquerque, New Mexico 87109-3435
Phone: (505) 342-3283

In northwestern New Mexico:

Durango Regulatory Office
278 Sawyer Drive, Room 1
Durango, Colorado 81303-7995
Phone: (970) 375-9509

In southeastern Colorado:

Southern Colorado Regulatory Office
720 North Main Street, Room 300
Pueblo, Colorado 81003-3047
Phone: (719) 543-9459

In southern New Mexico and western Texas:

El Paso Regulatory Office
P.O. Box 6096
Ft. Bliss, Texas 79906-0096
Phone: (915) 568-1359

Please visit our website for more information:

<http://www.spa.usace.army.mil/reg/>

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